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Ex parte

October 31, 2002

Marlene H. Dortch, Secretary Federal Communications Commission 445 12th St. SW Washington, D.C. 20554

Re: CC Docket No. 01-338

Dear Ms. Dortch:

On October 29, 2002, Herschel Abbott, Jon Banks, Bob Blau and the undersigned, all representing BellSouth, met separately with Chris Libertelli from Chairman Powell's office and with Bill Maher, Jeff Carlisle, Rich Lerner, Michelle Carey and Tom Navin from the Wireline Competition Bureau in connection with the above referenced proceeding. During this meeting, BellSouth discussed the relief that was warranted for unbundled network element (UNE) switching and UNE transport. The attached material was used in these meetings.

In accordance with Section 1.1206, I am filing this notice and the accompanying attachments electronically and request that you please place them in the record of the proceeding identified above. Thank you.

Sincerely,

Attachments

Cc: Chris Libertelli

Bill Maher Jeff Carlisle Michelle Carey Tom Navin Rich Lerner

What Relief is Needed for Switching

- Per the Time Warner Telecom (TWTC)-BellSouth framework, switching should be removed from the UNE list everywhere with regards to business end-user customers
 - Rationale: "CLECs are not impaired...due to the availability of competitive alternatives" TWTC-BellSouth ex parte to FCC
- Switching associated with residential customers should also be removed from the UNE list, as the same switches are used to serve both residence and business customers
- Transition for all UNE switching
 - No new UNE-P from effective date of FCC Order forward
 - Brief transition period for embedded base of UNE-P (no longer than 6 months)
 - BellSouth would continue to make market-priced switching available in all areas

BellSouth Has a Reliable and Well-Tested Process in Place for Hot Cuts

- BellSouth's well-established, well-documented process provides efficient, reliable and timely hot cuts
- Evidence shows that BellSouth's hot cuts are timely performed with minimal disruption to end-users
 - 99.6% completed within 15 minutes
 - Received a trouble report on less than 1% within 7 days of transfer
 (Data from January April, 2002 for coordinated conversions)
- BellSouth's systems and processes are scalable to meet increased demand
- BellSouth has, for years, efficiently accomplished loop cutovers affecting thousands of customers with minimal disruption or impairment

For conversion to "stand-alone" unbundled loop connected to CLEC's switching or switching provided by a third party, BellSouth will:

- Handle individual loop cutovers (including number porting) as is done today
- Handle multiple loop cutovers as "projects" as is done today
- Handle "bulk migration" of large quantities according to a process jointly developed by BellSouth, AT&T, and other CLECs

What Relief is Needed for Transport and Loops

- Eliminate unbundling requirements for transport and loops where alternatives exist
- Retain the "safe harbor" constraints for looptransport combinations and stand-alone elements
- Commingling issues must be resolved in a manner that does not destroy special access with no benefit to <u>local exchange</u> competition

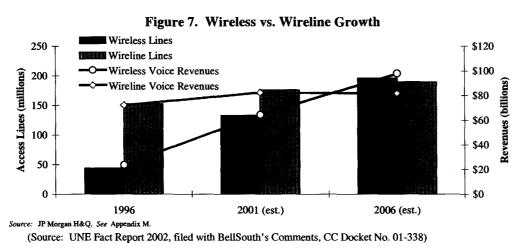
The Time Warner Telecom - BellSouth Framework Provides for Relief for Transport

- "Remove dedicated transport UNE where 3 or more competitive transport providers exist in either A or Z wire center"
 - Page 3 TWTC-BellSouth Joint Ex parte
- Rationale: CLECs are not impaired where that amount of competition is present
- All carriers, both ILECs and CLECs, have a strong disincentive to invest where UNEs are mandated
- Safe Harbors must be retained

Providing Relief in the Top 100 MSAs Is a Comparable Alternative

- The TWTC-BLS Framework would require a data showing for each area
- Providing relief in the top 100 MSAs would provide comparable relief without the initial data showing, assuming Safe Harbors are retained in all areas
- The FCC could use the TWTC-BLS bright-line test for areas beyond the Top 100 MSAs
- Commingling issues must be resolved as noted previously

Wireless Carriers Are Not Impaired Without UNEs



- Wireless Carriers are not impaired they are serving the market today and have over 130 million line equivalents
- "[M]andating the element's unbundling in every geographic market and customer class, without regard to the state of competitive impairment in any particular market...[will result in UNEs being available] to CLECs in many markets where there is no reasonable basis for thinking that competition is suffering from any impairment of a sort that might have [been] the object of Congress's concern." D.C. Circuit Court, <u>USTA v. FCC</u>

States Cannot Require Unbundling Where the FCC Has Found Non-Impairment

- Under Section 251(d)(2), the FCC alone is responsible for evaluating impairment and determining which network elements should be made available
- As USTA makes clear, unbundling in the absence of impairment creates severe social costs, including diminished investment, innovation, and facilities-based competition
- Consequently, once the FCC has found non-impairment or otherwise declined to mandate unbundling, the states may not disregard that determination
- Sections 251(d)(3) and 261(b) confirm that the states have no authority to order unbundling in such circumstances
 - These provisions only permit state requirements that are consistent with Section 251 and do not substantially prevent implementation of Section 251 and the purposes of the Act's local competition requirements
 - Because overbroad unbundling is antithetical to the Act's purposes and Section 251 leaves unbundling determinations to the FCC, state decisions that "reverse-preempt" an FCC decision not to require unbundling are void on their face
- Additional policy concerns likewise support FCC occupation of the field with respect to network unbundling
 - The industry needs more regulatory certainty, not less
 - The FCC correctly has sought to prevent wasteful and duplicative state proceedings, yet several PUCs already have adopted or proposed additional unbundling requirements at the urging of CLECs

Key Conclusions

- If UNE Switching is eliminated, CLECs could use UNE-L and transport to reach a centralized switch
- Transport Relief can accompany Switching Relief:
 - Any CLEC providing local service to end-user customers will not be hampered by local service use restrictions
 - Local usage safe harbors need not be removed
 - Transport UNE relief would have minimal impact on CLECs serving end-user customers
 - Relief must be granted where there is no impairment
 - Connection of voice-grade service loop UNEs to high capacity market-priced interoffice transport could eliminate the need for CLEC collocation in end-offices